IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9487 of 2004

Dr.Mohammad Qudrathullah Shafiullah ..Petitioner

vs.

1. State of Maharashtra and others ..Respondents

Shri S.D.Rayrikar for petitioner.
Shri P.I.Khemani,A.G.P.for respondent no.1
Shri G.S.Kulkarni for respondent no.2.

CORAM: A.P.SHAH AND
S.C.DHARMADHIKARI JJ
8th December,2004

P.C.

1. Rule. Respondents waive service.

2. By consent rule is made returnable forthwith.

3. The petitioner is M.Sc.Ph.D. and is teaching in Poona college the subject of Nuclear and Radiation Chemistry. Respondent No.4 is a minority institution runs the said college having faculty of Arts, Science and Commerce. The petitioner is working in Poona college since 1981 and is the seniormost teacher in the said college. In September, 2001, the post of Principal fell vacant on retirement of the then Principal Dr.S.N.Kathwal. The respondent management released the

advertisement in Indian Express inviting applications for the post of Principal and the Selection Committee selected Prof.Muzefer Shaikh as Rank I while the petitioner was at rank II. Prof.Muzefer Shaikh offered the Principalship subject to his acquiring Ph.D. within a period of one year. As Prof.Muzefer Shaikh failed to acquire the requisite qualification of Ph.D. within the stipulated period his appointment was cancelled and the present petitioner was appointed as the Principal of the college on 29th May, 2003. Respondent No.2 University, however, informed the college vide letter dated 7th October, 2003 that fresh selection be held for the post of Principal and waiting list prepared by the Selection Committee cannot be used for such process. The Management, therefore, published a fresh notice inviting applications for the post of Principal from amongst the teachers who were serving in the college. The Selection Committee held the interviews and out of the candidates who appeared for the interview selected the petitioner for the post of Principal and proposal for approval of the petitioner’s appointment was sent to University vide letter dated 3rd November, 2003. The respondent no.2 University, however, vide letter

dated 20th May, 2004 informed the College that since no advertisement has been released in the newspaper of national level or State level selection made by the college cannot be sustained. The legality and propriety of this letter is questioned in this petition under Article 226.

4. The only question that falls for consideration is whether the management of the minority institute is free to choose and appoint any qualified person as Principal of the College or whether the Management is required to follow the procedure prescribed by the University authorities. In Ammad V.Ewjay High School, 1999 1 CLR 322, a two Judge Bench of the Supreme Court cited with approval the following passage of the decision of the judgment of the Kerala High Court in Manager, Corporate E.Agency Vs.State of Kerala 1990(2) KLT 240.

> "The right to appoint the Headmaster of a school or the Principal of a College is one of prime importance in the administration of the institution. The right of the minority to administer an educational institution of its choice requires the presence of a person in whom they can repose confidence, who will

> carry out their directions, and to whom they can look forward to maintain the traditions, discipline and the efficiency of the teaching, when once the pivotal position of the Head Master is recognised, it has to be held that the right to appoint a person of its choice as Headmaster is of paramount importance to the minority any interference with which (otherwise then by prescribing qualifications and experience) will denude the right of administration of is content, reducing it to mere husk, without the grain. Such an inroad cannot be saved as a regulation which the state might impose for furthering the standards of education."

The Court further proceeded to observe:-

> "27. Thus, the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Act.30(i) of the Constitution and it cannot be chiseled out through any legislative act of executive rule except for fixing up the qualifications and conditions of service for the post. Any such statutory

executive fiat would be violative of the fundamental right enshrined in the aforesaid Article and would hence be void."

5. In the light of the settled position of law that the selection and appointment of a Principal is of the prime importance in the administration of educational institution and the minorities clearly cannot be denied such right of selection and appointment without infringing Article 30(i) of the Constitution. We have, therefore, no hesitation in holding that the impugned letter dated 20th May, 2004 issued by the University is wholly illegal and without jurisdiction. We, therefore, quash and set aside the said letter and direct the University to grant approval to the petitioner as the regular Principal from the date of his initial appointment i.e. 29th May, 2003.

6. Rule is made absolute accordingly.